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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue the Development of Rates and Infrastructure for Vehicle Electrification.	Rulemaking 18-12-006

ASSIGNED COMMISSIONER'S RULING REGARDING IMPLEMENTATION OF ASSEMBLY BILL 841

1. Background

The Legislature recently passed Assembly Bill (AB) 841 (Stats. 2020, Ch. 372) that, among other things, mandates certain changes to the way in which the Commission oversees and regulates the investments in transportation electrification made by the large and small electrical corporations. This Assigned Commissioner's Ruling (ACR) seeks feedback from the parties on how to implement and interpret certain portions of AB 841. Opening comments are due February 5, 2021, and reply comments are due February 19, 2021. Party comments will be utilized by the Commission in executing its mandate under AB 841 and may be used in future Commission decisions, resolutions, or dispositions of advice letters by the Commission's Energy Division.

2. Implementation of AB 841

2.1. Timing of Revised Commission Approach to Transportation Electrification Costs

AB 841 adds Section 740.19 to the Public Utilities Code (Pub. Util.),[1] which states that the "purpose of this section is to change the [Commission] practice of authorizing the electric distribution infrastructure located on the utility side of the customer meter needed to charge [electric vehicles (EVs)] on a case-by-case basis to a practice of considering that infrastructure and associated design, engineering, and construction work as core utility business, treated the same as other distribution infrastructure authorized on an ongoing basis in the [electrical corporation's general rate case]." This ACR interprets this to apply to the electric distribution infrastructure located on the utility side of the meter associated with both future transportation electrification (TE) programs and EV charging installed outside of TE programs in an electrical corporation's territory.

Given the consideration of the reasonableness and costs of these utility programs in an electrical corporation's general rate case (GRC) can only occur in the future, this ACR proposes that this new form of consideration should not impact previously approved programs or programs currently under consideration as of the date of this ACR. Party comment is sought on this interpretation and whether it is reasonable.

2.2. Definition of Electric Vehicles

This ACR proposes that the references to "electric vehicles" appearing in Section 740.19 should be assumed to include light-duty EVs, medium-duty EVs,

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[1] All further references to "Section" are to a section of the Public Utilities Code unless otherwise stated.

heavy-duty EVs, off-road EVs, and off-road electric equipment, as those terms are defined in Decision (D.) 20-09-025.

2.3. Common Treatment for Excess PEV Charging

Section 740.19(d)(3) states that "it is the intent of the Legislature that the interim policy, known as the Common Treatment for Excess [Plug-In Electric Vehicle (PEV)] Charging… shall be the policy applied by the [Commission], and may be revised by the [Commission] after the completion of the electrical corporation's general rate case cycle in effect on January 1, 2021, if a determination is made that a change in the policy is necessary to ensure just and reasonable rates for ratepayers." Further, Section 740.19(d)(2) states that "in supervising the alternative-fueled vehicle program, or vehicle electrification program, of an electrical corporation, the commission shall allow the residential service facility upgrade costs incurred as a result of the adoption of home-based electric vehicle charging for basic charging arrangements that exceed the utility's Electric Tariff Rule 15 (distribution line extensions) and Rule 16 (service line extensions) allowances to be treated as a common facility cost, to be recovered from all residential ratepayers." This ACR interprets both Sections 740.19(d)(2) and 740.19(d)(3) to be referencing the continuation of the same policy—the Common Treatment for Excess Charging. If parties interpret this differently, comments should include explanation of this rationale.

This policy was recently extended by ruling through December 31, 2021. This ACR proposes that the policy known as the Common Treatment for Excess PEV Charging continue indefinitely until revised by the Commission. This ACR seeks party comment on the best way to operationalize that interpretation. For example, should the electrical corporations be required to propose changes to the Electric Rules in order to give effect to this holding through a Commission decision, or may the electrical corporations propose such changes to their Electric Rules *sua sponte*?

This ACR also seeks party comment on the meaning of the phrase "general rate case cycle in effect on January 1, 2021" as used in AB 841. When do these cycles end for each of the electrical corporations?

2.4. Nature of Revised Cost Tracking

AB 841 requires the electrical corporations to track and report cost data in a new manner, as the statute expands the definition of electrical distribution infrastructure for the purpose of EV charging compared to utility-side distribution costs covered under traditional new service.[2] AB 841 modifies the definition of distribution infrastructure, as it relates to EV charging. The definition of distribution infrastructure from AB 841 is different from the definition for new service, but in line with the make-ready treatment that the Commission has authorized in past TE programs. The distinction is that currently, the electrical corporation will cover costs for distribution line extensions and new electrical service under Rules 15 and 16 up to an allowance for some categories of costs, but the customer is responsible for other costs (*e.g.*, civic construction, trenching, etc.).[3] Additional costs are covered under the make-ready treatment for participants within TE programs and the definition of distribution infrastructure within AB 841.[4]

This ACR assumes that accurate and thorough cost reporting will be essential since parties and the Commission will now only have a chance to

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[2] Pub. Util. Code § 740.19(b) and (c).

[3] *See* Electric Rules 15 and 16.

[4] Pub. Util. Code § 740.19(a).

review those costs *ex post* during a GRC proceeding rather than *ex ante* in a stand-alone TE application.

Within the advice letter filing required by AB 841,[5] this ACR proposes that the electrical corporations work together to submit a common proposal for their data collection that at a minimum addresses the following:

- Common methodology for isolating costs associated with EV charging that may not previously have been isolated (*e.g.*, how to allocate trenching costs to EV charging for a site that was making multiple upgrades and how to allocate design and permitting costs for projects).
- Common cost category definitions for poles, vaults, service drops, transformers, mounting pads, trenching, conduit, wire, cable, meters, other equipment used, and associated engineering and civil construction work, as described in statute.
- Common cost categories for anything else the electrical corporations propose to track, avoiding duplicative categories.
- Reporting on the cost of each upgrade made under the new policy.
- Any cost reduction options offered to each customer (*e.g.*, vehicle-grid integration strategies).
- How much charging and which power level(s) was installed per site installation.
- Total new EV charging within the electrical corporation's territory as a result of the AB 841 expenditures, and reporting of any publicly available charging to the relevant public databases.
- Whether charging at the site receiving the expenditure is public or private.
- Average amount of cost to ratepayers resulting from the new AB 841 rule, on a per customer basis, if assuming that

[5] Pub. Util. Code § 740.19(c).

customer contributions to the utility-side expenditures are eliminated (see below for more detail on this question).

- Whether the customer's site is located in a disadvantaged community (DAC), in another designated underserved community location, or neither.

Party comment is sought on this proposal for a common framework to be used by the electrical corporations in their advice letter filings, whether it is reasonable and whether the small and large electrical corporations should have different requirements, including justification. This includes the questions of how best to align and coordinate with existing TE-related data reporting requirements, including the Joint Investor-Owned Utility Electric Vehicle Charging Infrastructure Cost Report, how frequently the electrical corporations should be required to publicize non-confidential versions of the cost data, and whether the electrical corporations should be required to contract with a third party to publicize the data. Relatedly, party comment is sought on the other data that the Commission would need to collect, both with respect to cost data and other metrics, to determine the effectiveness of electrical corporation spending and promote transparency.

This ACR also proposes that each of the electrical corporations should also submit to the Commission a list of any new cost categories for it to track and pay for, a list of the cost categories for which the electrical corporation already tracked and paid, and a list of the cost categories that individual customers were responsible for covering prior to AB 841. This is to allow the Commission to measure the cost impact of this new policy compared to the status quo. Party comment is sought on the reasonableness of this approach.

This ACR proposes that electrical corporations should each submit one Tier 3 advice letter to establish the memorandum account to contain the tracked costs and the new rule or tariff required by AB 841. With respect to AB 841's requirement that the electrical corporations track the relevant costs as of January 1, 2021, and before establishment of the memorandum account, this ACR proposes that each of the electrical corporations should track these costs in a spreadsheet or other appropriate format before the approval of the memorandum account in mid-2021. Party comment is sought on the reasonableness of this approach.

2.5. Penalties

AB 841 requires that the Commission "apply appropriate penalties to the extent an electrical corporation is not accurately tracking all expenses." This ACR proposes that the Commission levy a $500 per day[6] penalty following a reporting deadline in which an electrical corporation fails to submit a report, submits inaccurate information, or submits an incomplete report. Party comment is sought on this proposal and whether the Commission should derive $500/day or a different specific dollar amount for this penalty. Please cite to sources or authority wherever possible. Alternatively, if parties do not support this proposal for penalties, comment is sought on the question of what electrical corporation action and/or inaction should trigger a penalty, and what should the penalty be? If the Commission adopts penalties, should both large and small electrical corporations be subject to those penalties?

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[6] *See* Pub. Util. Code § 2107 ("[a]ny public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars ($500), nor more than one hundred thousand dollars ($100,000), for each offense").

2.6. Customer Contributions

Currently, non-residential customers of the electrical corporations are required to make certain contributions for the cost of completing utility-side distribution infrastructure improvements to serve load, including EV charging load, at the customer's location. AB 841 arguably adjusts or eliminates these customer contributions if the project is related to work to support EV charging, but this ACR seeks party comment on this question.

In particular, Section 740.19(c) states that "[t]he new tariff [related to utility-side distribution infrastructure work to support EV charging] shall replace the line extension rules currently used (as of July 1, 2020) and any customer allowances established shall be based on the full useful life of the electrical distribution infrastructure." It also states that "[e]ach electrical corporation shall recover its subsequent revenue requirement for [utility-side distribution infrastructure work to support EV charging] through periodic general rate case proceedings. In those proceedings, the costs shall be treated like those costs incurred for other necessary distribution infrastructure."

This ACR proposes that this language of AB 841 should be interpreted to mean that the new rules or tariffs submitted by the electrical corporations should no longer require a contribution by the customer for the utility-side distribution infrastructure work to support EV charging, as Rules 15 and 16 require for most new service. However, this language could also be interpreted as continuing to require such customer contributions so that the costs for utility-side distribution infrastructure work to support EV charging are "treated like those costs incurred for other necessary distribution infrastructure." Party comment is sought on this issue. Should the calculations of allowances determined under Rules 15 and 16 apply in some manner to these new tariffs or Electric Rules? Should some other form of cost sharing between ratepayers and the customer apply to these new tariffs or Electric Rules? Is the calculation of net revenue the electrical corporation expects to recover over time applicable to these new tariffs or Electric Rules?

2.7. Determining Reasonableness

For those parties that agree with the ACR's proposed approach of no longer requiring any customer contribution for utility-side costs, party comment is sought on how the Commission should address potentially unreasonable or exceedingly high costs incurred by the electrical corporation and its ratepayers in order to comply with the requirements of Section 740.12(b) that TE "[p]rograms proposed by electrical corporations shall seek to minimize overall costs and maximize overall benefits" and "are in the interests of ratepayers." In other words, as the existing customer contribution rules are designed to disincentivize unreasonable ratepayer costs, how should this policy issue be addressed in the absence of customer contributions?

For example, party comment is sought on these potential measures for ensuring that TE expenditures continue to be in the interests of ratepayers:

1) implementing a length cap on utility side make-ready (*e.g.*, maximum number of feet from distribution system to the meter),
2) including a cost cap for certain costs, like trenching,
3) limits to where a new meter may be located,
4) requiring cost-sharing for the customer's new meter,
5) limits to the coverage of environmental permits and/or undergrounding wires,
6) adopting an average cost or a cost cap, above which there is additional scrutiny and data reporting requirements in the electrical corporation's next GRC, and/or

7) capping ratepayer cost contributions based on host site characteristics (*e.g.*, number and capacity of EV charging ports).

Parties may also include within comments any other proposal(s) for limiting unreasonable costs.

Party comment is also sought on the definition of distribution infrastructure used by AB 841, what is included in this definition as compared to how distribution infrastructure is typically categorized, how it aligns or differs with the categories of costs covered through existing Rules 15 and 16, and whether the use of that definition will complicate the reasonableness analysis normally conducted in a GRC proceeding. For example, is the lack of a delineation between primary and secondary distribution in the definition used by AB 841 problematic?

Finally, should the reasonableness of an electrical corporation's expenditures pursuant to AB 841 be reviewed in a GRC proceeding in light of transportation electrification goals set by statute, the Governor and other state agencies, and the Commission in other TE proceedings (*e.g.*, a Transportation Electrification Framework that may eventually be adopted by the Commission)?

2.8. Underserved Communities

AB 841 amends Section 740.12(b) of the Public Utilities Code by adding final sentence that reads "[n]ot less than 35 percent of the investments pursuant to this subdivision shall be in underserved communities as that term is defined in Section 1601." This ACR interprets "investments pursuant to this subdivision" as referring to TE programs proposed by electrical corporations pursuant to Section 740.12 and not specifically utility-side distribution infrastructure work to support EV charging. The impact of this interpretation would be that the 35 percent investment requirement would not apply to costs incurred by the electrical corporation to support utility-side distribution infrastructure work to support EV charging, unless that infrastructure work was part of an electrical corporation's TE program applied for and approved pursuant to Section 740.12. Party comment is sought on this interpretation.

Additionally, AB 841's definition of underserved communities has some ambiguity around the term "community." This ACR seeks party comment on how to interpret "community." For example, should the Commission interpret the term as applying to a census tract?

2.9. New Tariff, New Electric Rule, or Amended Electric Rules

AB 841 requires that the electrical corporations seek Commission approval of "a new tariff or rule that authorizes each electrical corporation to design and deploy all electrical distribution infrastructure on the utility side of the customer's meter for all customers installing separately metered infrastructure to support charging stations…".[7] This ACR seeks party comment on whether this requirement may be fulfilled by amending existing Electric Rules, or if the creation of a wholly new Electric Rule or tariff is required. This ACR does not propose an answer to this question.

Further, this ACR seeks party comment on whether this new tariff, new Electric Rule or amendments to existing Electric Rules should be optional for customers.

2.10. Load Management Solutions

Party comment is sought on the question of whether the Commission should require the electrical corporations to offer load management solutions to customers taking advantage of the new rule or tariff required by AB 841, and if

[7] Pub. Util. Code § 740.19(c).

so what those solutions should include. For example, should requirements be imposed similar to those imposed by D.20-08-045, establishing Southern California Edison Company's (SCE's) Charge Ready 2 program, that directed participants to work with SCE to establish load management plans? Would some physical or software solution provide benefits? Should EV supply equipment (EVSE) installed pursuant to these new rules or tariffs be required to be networked in order to enable future vehicle-grid integration (VGI) capability?

D.20-12-029 states that "any future tariff or rule filed by a large electrical corporation for service line and/or distribution line upgrades to support transportation electrification shall provide an option for customer side ALM [Automated Load Management] where beneficial to ratepayers while meeting TE charging needs."[8] Pursuant to this decision, Energy Division staff will be hosting a workshop on criteria for ALM, also known as EV Energy Management Systems (EV EMS), but parties are encouraged to comment on how AB 841 rules and/or tariffs should implement the requirements of D.20-12-029 within comments on this ACR. Specifically, how should the rules or tariffs established pursuant to AB 841 address the option for customer-side ALM/EV EMS, in particular considering that AB 841 requires new rules or tariffs associated with electrical distribution infrastructure on the utility side of the meter? What considerations should electrical corporations make given the new rules pursuant to AB 841 will be for utility-side electrical distribution infrastructure? Comments may also address whether any different criteria compared to those that parties will discuss at the forthcoming ALM/EV EMS workshop are necessary to determine the appropriate locations and situations for the deployment of ALM/EV EMS for

[8] D.20-12-029, Section 6.1.

AB 841 rules or tariffs versus deployment for other purposes, whether requirements for ALM/EV EMS deployment could affect timelines for interconnection and energization under these new rules, and whether ALM/EV EMS requirements could affect implementation of other potential VGI services or have other unintended consequences. This ACR does not propose an answer to these questions.

Further, this ACR seeks party comment on whether the new tariffs or Electric Rules have the potential for any adverse impact to load management, vehicle-grid integration policy and/or future submetering policy. If so, how should the electrical corporations balance load management goals with the establishment of this new tariffs or Electric Rules. Conversely, parties should comment on whether there may be any unintended consequences or benefits of incorporating load management requirements into this policy.

2.11. Interactions with the Transportation Electrification Framework

The Commission is currently considering whether to adopt a proposed Transportation Electrification Framework (TEF) to guide future investments in TE infrastructure by the electrical corporations. Party comment is sought on the interactions between AB 841 and the draft TEF, and what the impact of AB 841 should be on the TEF process and future TE program applications by the electrical corporations. Specifically, how will electrical corporations account for utility-side costs within future TE programs? If electrical corporations will not include utility-side costs within future TE applications, should the Commission direct them to forecast expected utility-side costs?

Further, this ACR seeks comments on whether additional staff at the electric corporations are necessary to support additional new service requests related to EV charging to ensure the electric corporations staffing levels do not delay of EV charging installations. What policies, if any, should the Commission establish to limit delays that could occur due to increased workload resulting from this policy?

2.12. Small Electrical Corporations

Party comment is sought on the question of whether AB 841 should be applied to small electrical corporations in a manner identical to how it is applied to large electrical corporations. Party comment is sought on the following specific questions:

- Will data reporting requirements need to differ given the limited EV charging built in the territories of the small electrical corporations and the limited staff retained by the small electrical corporations?
- Will AB 841's Electric Vehicle Infrastructure Training Program (EVITP) requirement impact labor availability and labor costs for the small electrical corporations?
- Who will offer and fund EVITP training for the small electrical corporations?
- Will AB 841's EVITP requirement force small electrical corporations to outsource hiring electricians outside of their territories?
- Should the cost recovery period be the same for the small electrical corporations as the large electrical corporations given the cost burden may be more difficult for the small electrical corporations to manage?
- Does the underserved communities requirement of AB 841 apply to small electrical corporations that may not contain sufficient underserved communities in their territories to an extent feasible to implement the requirement?

2.13. Additional Implementation Questions

Parties are encouraged to provide comments addressing any additional implementation questions or issues related to AB 841 that are not posed by this ACR.

IT IS RULED that:

1. Opening comments from parties on the questions and issues posed by this Assigned Commissioner's Ruling are due February 5, 2021.

2. Reply comments from parties on the questions and issues posed by this Assigned Commissioner's Ruling are due February 19, 2021.

Dated January 15, 2021, at San Francisco, California.

/s/ CLIFFORD RECHTSCHAFFEN
Clifford Rechtschaffen
Assigned Commissioner